



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0344; FRL-10015-12-Region 4]

Air Plan Approval; North Carolina: Permits Requiring Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality, on July 10, 2019. This SIP revision seeks to modify the State's permitting program public participation procedures by adding two types of minor source permits to the list of permits that must undergo public participation and by making minor edits. EPA is proposing to approve this revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0344 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at akers.brad@epa.gov or via telephone at (404) 562-9089.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Proposing?

North Carolina has SIP-approved permitting regulations at 15A North Carolina Administrative Code (NCAC) Subchapter 02Q, Section .0300 - *Construction and Operation Permits*. These regulations include requirements for obtaining certain construction and operating permits, including applicability provisions and administrative procedures. NCDEQ's July 10, 2019, SIP revision seeks to make changes to the SIP-approved list of construction and operating permits which are required to undergo public participation at Section .0306, *Permits Requiring Public Participation*. The list in Section .0306 includes major source permits as well as certain types of minor source permits.

II. Analysis of the State's Submittal

NCDEQ's July 10, 2019, SIP revision transmits changes to Section .0306, *Permits Requiring Public Participation*.¹ As described below, the changes to Section .0306 add two types of permits subject to public participation and make several minor edits, including the removal of obsolete regulatory references. The permits listed in Section .0306 must undergo public notice for comments with the opportunity for the public to request a public hearing. Pursuant to Section .0307(d), *Public Participation Procedures*, the public comment period for these permits must last for at least 30 days.

The July 10, 2019, SIP revision adds two types of permits to the list of permits which must undergo public participation. First, .0306(a)(10) is added, which requires public notice of permits for sources seeking an exemption from the 20 percent opacity standard in paragraph (d) of 15A NCAC 02D .0521, *Control of Visible Emissions*, through the process at Section .0521, paragraph (f). Under paragraph (f), a source can comply with the 40 percent opacity standard in paragraph (c) instead of the 20 percent opacity standard in paragraph (d) only if the owner or operator of the source: 1) demonstrates compliance with applicable mass emissions standards for particulate matter; 2) demonstrates that emissions allowed up to the opacity standards under paragraph (c) will not violate any National Ambient Air Quality Standards, and 3) applies for a revised permit. Paragraph (f) also requires that source testing be submitted within 90 days of the application for a revised permit.

Next, the SIP revision adds .0306(a)(11), which requires public notice of permits for sources using alternative monitoring procedures or methodologies pursuant to 15A NCAC 02D

¹ The State submitted the SIP revision following the readoption of several air regulations, including .0306, pursuant to North Carolina's 10-year regulatory readoption process at North Carolina General Statute 150B-21.3A.

.0606, *Sources Covered by Appendix P of 40 CFR Part 51*,² at paragraph (g)³ or .0608, *Other Large Coal or Residual Oil Burners*, at paragraph (g).⁴

The SIP revision also contains minor edits to .0306,⁵ including removal of obsolete cross-references to rules in the list of permits subject to public participation and renumbering the SIP-approved version of subparagraph (a)(10) to (a)(12).^{6,7}

² EPA's regulations at 40 CFR part 51, Appendix P, *Minimum Emission Monitoring Requirements*, set minimum continuous emissions monitoring requirements for the following source categories unless they are subject to a performance standard at 40 CFR part 60, or in limited other circumstances: 1) fossil fuel-fired steam generators; 2) fluid bed catalytic cracking units; 3) sulfuric acid plants; and 4) nitric acid plants.

³ The SIP-approved version of Section .0606(g) states that the "owner or operator of the source may request to use a different procedure or methodology than that required by this Rule if one of the conditions identified in 40 CFR part 51, Appendix P, Section 3.9 exists. The person requesting to use a different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace."

⁴ The SIP-approved version of Section .0608(g) states that the "owner or operator of the source may request to use a different procedure or methodology than that required by this Rule if one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists. The person requesting to use a different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace."

⁵ North Carolina's April 1, 2018 rule revision also removed paragraph (b) from the state-effective version of the rule. This paragraph required a 30-day public notice period for permits that placed a physical or operational limitation on a facility to avoid title V requirements under 15 NCAC 02Q 0500. Furthermore, the revised rule renumbered paragraph (c) of the state-effective version of the rule to paragraph (b). However, these changes are not before EPA for action because 1) the version of paragraph (b) that the State removed in the April 1, 2018 rule revision is not in the SIP, and 2) the version of paragraph (b) in the SIP is identical to the version of paragraph (b) in the April 1, 2018 rule. See 67 FR 64990 (October 22, 2002).

⁶ North Carolina deleted the reference to paragraph (c)(2)(B) of 15A NCAC 02D .1204, *Sewage Sludge Incinerators*, because the State removed (c)(2)(B) from the rule. The State had previously required permits issued under paragraph (c)(2)(B) to undergo public participation because that paragraph allowed incinerators subject to the rule comply with an alternative emission limit in lieu of the operation-based limitation in (c)(1)(A) if the owner or operator provided a demonstration that the ambient air quality standards for particulate matter would not be violated. There is no longer an option to comply with the alternative emission limit, and therefore, the reference is obsolete.

⁷ North Carolina deleted the reference to 15A NCAC 02D .0936, *Graphic Arts*, because the State repealed this rule and superseded it with new rules. Accordingly, North Carolina updated 02Q .0306 to reference the replacement rules at 15A NCAC 02D .0961, *Offset Lithographic Printing and Letterpress Printing*, and 15A NCAC 02D .0965, *Flexible Package Printing* such that public participation is required for permits with a "limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system" under .0961 or .0965.

EPA is proposing to approve the two additions to the list of permits requiring public participation pursuant to CAA section 110 as a SIP-strengthening measure and 40 CFR 51.161. EPA is proposing to approve the remaining changes to Section .0306 because they are minor edits that do not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 15A NCAC Subchapter 02Q, Section .0306, *Permits Requiring Public Participation*, state effective April 1, 2018, which expands the types of permits which require public participation and makes minor edits to the rule. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve revisions to 15A NCAC 02Q .0306, *Permits Requiring Public Participation*, that add two types of permits to the list of permits that must undergo public participation and make minor edits, including the removal of obsolete regulatory references. EPA is proposing to approve these changes for the reasons discussed above.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices,

provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 30, 2020.

Mary Walker,

Regional Administrator,

Region 4.

